

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #3	CCRB Case #: 201501405	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 02/22/2015 8:07 PM	Location of Incident: 61 Saint Nicholas Avenue	Precinct: 28	18 Mo. SOL 8/22/2016	EO SOL 8/22/2016	
Date/Time CV Reported Sun, 02/22/2015 8:55 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 02/26/2015 8:20 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Marc Hummel	23029	950604	028 PCT
2. POM Michael Duffy	27097	948329	028 PCT
3. DTS Jesus Capo	01906	926640	028 PCT
4. LT Thomas Kelly	00000	936854	028 PCT
5. An officer			028 PCT
6. Officers			028PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Bertie Bowman	1150	946800	028 PCT
2. POM Matthew Hughes	31491	952867	028 PCT
3. POM Michael Dappolonia	14158	952637	028 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Thomas Kelly	Abuse: Lt. Thomas Kelly stopped § 87(2)(b) and individuals.	
B.POM Michael Duffy	Force: PO Michael Duffy used physical force against § 87(2)(b)	
C.LT Thomas Kelly	Abuse: Lt. Thomas Kelly questioned § 87(2)(b)	
D.LT Thomas Kelly	Abuse: Lt. Thomas Kelly frisked § 87(2)(b) and § 87(2)(b)	
E. Officers	Force: Officers used physical force against § 87(2)(b)	
F. An officer	Force: An officer hit § 87(2)(b) head against the ground.	
G.DTS Jesus Capo	Abuse: Det. Jesus Capo searched § 87(2)(b)	
H.DTS Jesus Capo	Abuse: Det. Jesus Capo damaged § 87(2)(b)s property.	
I.POM Marc Hummel	Force: PO Marc Hummel used physical force against § 87(2)(b)	

Case Summary

On February 22, 2015, Lt. Thomas Kelly of the 28th Precinct filed this complaint on behalf of § 87(2)(b) with the Internal Affairs Bureau via telephone, generating IAB log number 2015-4881. On February 26, 2015, IAB referred this case to the CCRB.

On February 22, 2015, at approximately 7:38 p.m., Lt. Thomas Kelly, Det. Jesus Capo, and PO Michael Duffy were canvassing for suspects in regards to an assault and stabbing that had occurred in the vicinity of West 116th Street between Lenox Avenue and Adam Clayton Powell Jr. Boulevard in Manhattan. During this canvass, Lt. Kelly, Det. Capo, and Michael Duffy observed a group of five males, one of whom was later identified as § 87(2)(b) standing in front of 61 Saint Nicholas Avenue in Manhattan. As the officers approached this group in their RMP, § 87(2)(b) walked away from the group. Lt. Kelly, Det. Capo, and PO Duffy exited the RMP and allegedly ordered him to put his hands up (**Allegation A**) and he complied. The officers then grabbed § 87(2)(b) jacket and pushed him into a roll-down security gate (**Allegation B**) without saying anything to him beforehand except ordering him to put up his hands. An officer identified by the investigation as PO Duffy twisted § 87(2)(b) arm (**Allegation B cont'd**) and asked him if he had anything on him (**Allegation C**). Lt. Kelly, Det. Capo, and PO Duffy allegedly frisked § 87(2)(b) (**Allegation D**). At the time, § 87(2)(b) had a serrated stainless steel kitchen knife in his left inside pocket. As the officers frisked him, the knife shifted from the pocket into the lining of the jacket. § 87(2)(b) felt the knife and remembered that it was in his jacket, which prompted him to run away from the officers. Lt. Kelly and PO Duffy pursued him on foot while Det. Capo pursued him in the RMP. All three officers lost sight of § 87(2)(b)

§ 87(2)(b) ran a full lap around the block and was cut off by Sgt. Bertie Bowman, while PO Michael Dappolonia and PO Marc Hummel caught up to § 87(2)(b) on foot. The officers ordered § 87(2)(b) to get on the ground and he complied. One of the officers that were chasing him allegedly forcefully put his knee into his back (**Allegation E**), resulting in a bruise to his lower back. Another officer whom § 87(2)(b) could not identify allegedly held his foot on § 87(2)(b) ankle until § 87(2)(b) was lifted from the ground (**Allegation E cont'd**), resulting in bruising to his ankle. An officer whom § 87(2)(b) could not identify then allegedly grabbed § 87(2)(b) hair, lifted his head up, smashed it onto the floor, and rubbed his face against the pavement (**Allegation F**). This officer allegedly repeated this action twice, resulting in scrapes to both of § 87(2)(b) cheeks and his chin. § 87(2)(b) was then handcuffed and the officers lifted him up and shoved him into a waist-high fence (**Allegation E cont'd**), causing his back to make impact with the fence. PO Hummel continued to frisk § 87(2)(b) (**Allegation D cont'd**) and an officer identified by the investigation as Det. Capo unbuttoned his jacket, ripped a hole in the lining (**Allegation G**), and recovered the knife (**Allegation H**). PO Hummel and an unidentified officer then walked § 87(2)(b) to an RMP and allegedly shoved him into the side of the RMP, causing his chest to make impact with the RMP, and then shoved him into the RMP (**Allegation I**).

Mediation, Civil, and Criminal Histories

- § 87(2)(b) stated that his injury was major and was a focus of his complaint and that he intended to file a lawsuit in regards. As such, this case is ineligible for mediation.
- As of May 20, 2015, § 87(2)(b) has not filed a notice of claim in regards to the incident (see Board Review 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (see Board Review 03).
- PO Michael Duffy has been a member of the NYPD for 5 years and has 3 prior CCRB allegations involving 3 cases with no substantiated allegations. Two of these three allegations were physical force allegations.
- Lt. Thomas Kelly has been a member of the NYPD for 10 years and has 3 prior CCRB allegations involving two cases with one substantiated allegation. § 87(2)(i)
§ 87(2)(b)
 - In case number 201402848, the investigation determined that Lt. Kelly improperly entered and searched an apartment.
- Det. Jesus Capo has been a member of the NYPD for 14 years and has 19 prior CCRB allegations involving 9 cases with one substantiated allegation. § 87(2)(g)
§ 87(2)(b)
 - In case number 200510189, the investigation determined that Det. Capo refused to provide his name and shield number to an individual upon request.
- PO Marc Hummel has been a member of the NYPD for 3 years and has 8 prior CCRB allegations involving 3 cases with no substantiated allegations. § 87(2)(g)
§ 87(2)(b)

Potential Issues

- On March 26, 2015, the investigator conducted a canvass of the incident location and found several surveillance cameras affixed to the 67-69 Saint Nicholas Avenue. The investigator spoke to the manager of the building, § 87(2)(b), who stated that she previously spoke to § 87(2)(b) attorney § 87(2)(b), who came to the building to look for footage. § 87(2)(b) § 87(2)(b) stated that she called the company that handles the surveillance cameras and told them to send § 87(2)(b) whatever footage they had of the incident. § 87(2)(b) § 87(2)(b) said she will call the company to see if the footage has been cycled through and would call the investigator with whatever information she received. She was unwilling to provide contact information for this company at the moment and told the investigator to reach out to § 87(2)(b) § 87(2)(b) § 87(2)(b) stated that the footage shows heavy police activity, but does not show § 87(2)(b) at any point. § 87(2)(b) § 87(2)(b) refused to provide the footage because he needed § 87(2)(b) permission beforehand in order to do so. On April 3, 2015, the investigator called § 87(2)(b) § 87(2)(b) who said she would get the investigator the surveillance camera company's contact information and then hung up. Later that day, the investigator received a call from § 87(2)(b) § 87(2)(b) daughter, § 87(2)(b), who said the building's footage is kept for 30 days, but the security company may have it saved because they provided the footage to § 87(2)(b) § 87(2)(b) § 87(2)(b) said she and § 87(2)(b) § 87(2)(b) would be willing to provide the company's contact information, but wanted a request made in writing in the form of a letter or subpoena. On May 7, 2015, § 87(2)(b) § 87(2)(b) responded to the investigator's subpoena. She identified the surveillance camera company as HTI Visions and stated that her attorney, § 87(2)(b), would be able to assist the investigator in obtaining the footage. Voicemails were left for § 87(2)(b) § 87(2)(b) on May 18, 2015, May 19, 2015, and June 22, 2015. To date, the investigator has not heard from § 87(2)(b) § 87(2)(b). A representative from HTI Visions informed the investigator that surveillance owners must be obtained directly from the property manager. In light of the above, this case is being closed without the surveillance footage from 67-69 Saint Nicholas Avenue.

Findings and Recommendations

Allegation A: Lt. Thomas Kelly stopped § 87(2)(b) and individuals.

Allegation C: Lt. Thomas Kelly questioned § 87(2)(b)

Allegation D: Lt. Thomas Kelly frisked § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) stated that as he was walking away from a group of boys that he did not know, four officers exited an RMP. An officer told him to put his hands up and he complied. All four of the officers allegedly grabbed § 87(2)(b) jacket and pushed him into a roll-down security gate without saying anything to him beforehand besides ordering him to put his hands up. An officer identified by the investigation as PO Michael Duffy asked § 87(2)(b) “Do you have anything on you?” and § 87(2)(b) said he did not. All four officers allegedly frisked § 87(2)(b) all over his body. § 87(2)(b) remembered that he had a serrated stainless steel kitchen knife (see Board Review 04 for property voucher and photograph) in his jacket and ran away from the officers approximately six to seven minutes after being pushed into the gate. After he was apprehended and handcuffed, the officers continued to frisk § 87(2)(b) for his knife.

PO Duffy, Det. Capo, and Lt. Kelly all stated that only PO Duffy approached § 87(2)(b) while Det. Capo approached the group of males. Witnesses at the scene of the stabbing informed PO Duffy that the suspects, a group of young black and Hispanic males, ran down West 116th Street and turned right onto Saint Nicholas Avenue. PO Duffy stated that while canvassing for the suspects of the stabbing, he observed a group of males “standing there and doing nothing.” However, as soon as the officers stopped their RMP, § 87(2)(b) walked away from the group and started “playing with his waistband.” This prompted the officers to exit the RMP. PO Duffy stated that he approached § 87(2)(b) and asked him where he was going and § 87(2)(b) kept walking and repeatedly reached down into his pockets and the waistband area of his jacket. PO Duffy repeatedly told § 87(2)(b) to stop and § 87(2)(b) complied voluntarily. PO Duffy asked § 87(2)(b) if he had anything on him and frisked him to see why he kept reaching towards his pockets and waistband. While frisking the bottom left side of § 87(2)(b) jacket, PO Duffy felt the outline of a knife in the lining of the jacket. As soon as PO Duffy felt the knife, § 87(2)(b) ran away. PO Duffy noted that § 87(2)(b) knife was recovered before he caught up to § 87(2)(b). A UF250 prepared by PO Duffy (Board Review 05) states that a § 87(2)(b)-old black male was stopped at 61 Saint Nicholas Avenue at 7:38 p.m. because he fit the description of a suspect and was frisked because he was making furtive movements and was suspected of a violent crime. The UF250 Index provided by the 28th Precinct (Board Review 06) identifies this individual as § 87(2)(b).

Det. Capo’s account is generally consistent with PO Duffy’s. Det. Capo did not recall if the group of males was doing anything that caught his attention, but noted that he did not recognize them as being from the immediate area. The fact that these males were “around the block” from where the stabbing took place and that § 87(2)(b) walked away from the group after making eye contact with the officers raised Det. Capo’s suspicion. Det. Capo approached the group of males and collected their identifications. When § 87(2)(b) ran, Det. Capo left the group of males and pursued him in an RMP. After § 87(2)(b) was handcuffed, PO Duffy told Det. Capo that § 87(2)(b) had a knife in the lining of his jacket. Det. Capo saw the outline of this knife in the lining of the jacket and recovered the knife. The handwritten UF250 prepared by Det. Capo (Board Review 07) states that § 87(2)(b) was stopped because he was making furtive movements, fit the description of the suspect of a crime, and fled as officers approached. The UF250 also states that § 87(2)(b) was frisked because he was making furtive movements, was suspected of a

violent crime, and refused to comply with officers' directions, leading to a reasonable fear for his safety.

Witnesses at the scene of the stabbing told Lt. Kelly that a group of approximately five to ten black and Hispanic males ages 18 to 22 fled eastbound on West 116th Street. Aside from the males' ages and the fact that he knew that they were not from the neighborhood, nothing indicated to Lt. Kelly that the group of males Det. Capo stopped were involved in the stabbing. He stated that the officers initially wanted to approach the group to see if they had seen anything or knew anything about the stabbing. § 87(2)(b) walking away from the group upon the officers' approach and making a "furtive movement" towards a pocket in his jacket caused Lt. Kelly to have reasonable suspicion. Lt. Kelly noted that the group of males was stopped, but he did not believe their identifications were retrieved and noted that they were free to leave after the foot pursuit began. Lt. Kelly also pursued § 87(2)(b) on foot and the knife was already recovered before he caught up to § 87(2)(b).

PO Hummel stated that after § 87(2)(b) was handcuffed, he frisked § 87(2)(b) left side and felt a hard object that was later identified as a knife and recovered by Det. Capo.

The radio run for the stabbing (Board Review 08) was generated at 7:24 p.m. Det. Capo's handwritten UF250 specifies the time of § 87(2)(b) stop as 7:38 p.m. No description of the suspects was given over the radio run. A UF61 prepared in regards to the stabbing (Board Review 09) states that the suspect of the stabbing was part of a group of ten males. The location of the stabbing (§ 87(2)(b)) is 0.2 miles away from the location of the initial stop (61 Saint Nicholas Avenue) (see Board Review 10).

An officer may stop and detain an individual if he or she has a reasonable suspicion that the individual has committed, is committing, or is about to commit a crime (People v. DeBour, 40 N.Y.3d 210 (1976)). An officer cannot ask accusatory questions without founded suspicion of criminality (People v. Hollman, 79 N.Y.2d 181 (1992)). Officers are permitted to frisk a suspect if they reasonably believe the suspect may be armed and dangerous, based on the totality of the circumstances encountered (People v. Walton, 4 Misc. 3d 1018A (2004). According to Walton, "some of the factors which may combine to provide a lawful predicate for a frisk of defendant are the nature of the radio report, the independent confirmation of that broadcast by an identified witness at the scene, whether defendant matched a description, defendant's presence in close time and proximity to the incident, defendant's flight upon seeing the officers, defendant's demeanor or physical gestures, and the nature of defendant's response to the officer's initial inquiry." See Board Review 11.

§ 87(2)(g)
[REDACTED]

§ 87(2)(g)

Allegation B: PO Michael Duffy used physical force against § 87(2)(b)

§ 87(2)(b) alleged that after he put his hands up, four officers grabbed his jacket and pushed him into a roll-down security gate, causing his back to make impact with the gate. An officer identified by the investigation as PO Duffy then twisted § 87(2)(b) arm, asked § 87(2)(b) if he had “anything on [him],” and then frisked § 87(2)(b). PO Duffy stated that § 87(2)(b) was standing on the sidewalk close to a wall when he stopped him. He acknowledged having § 87(2)(b) against a security gate, but stated that neither he nor any other officer pushed or slammed him into the gate and that he did not make any physical contact with § 87(2)(b) before he began frisking him. PO Duffy stated that every time he reached for § 87(2)(b) pocket, § 87(2)(b) would flinch, turn, and put both of his arms down towards where the knife was later recovered, so he would pull § 87(2)(b) hands back up. He stated that after he felt the knife, he turned § 87(2)(b) around, placed him against a wall, and attempted to grab his hands and handcuff him and § 87(2)(b) elbowed him in the neck/chest area and ran away. Det. Capo saw PO Duffy grab § 87(2)(b) jacket or his person and attempt to push § 87(2)(b) towards a security gate, but § 87(2)(b) offered resistance by moving around. He could not explain how § 87(2)(b) was moving around because his attention was directed towards the group of males. Det. Capo did not know if PO Duffy twisted § 87(2)(b) arm, but noted that he was attempting to gain control of § 87(2)(b). Lt. Kelly stated that neither PO Duffy nor any other officer pushed § 87(2)(b) into the security gate or twisted his arm. He stated that PO Duffy ordered § 87(2)(b) to put his hands against the gate, but § 87(2)(b) raised and lowered his hands and refused to comply, so PO Duffy would lift § 87(2)(b) hands and kept putting them against the gate.

Patrol Guide Procedure 203-11 (Board Review 11) states that officers must use the minimum necessary physical force at the scene of a police incident.

§ 87(2)(g)

Allegation E: Officers used physical force against § 87(2)(b)

Allegation F: An officer hit § 87(2)(b) head against the ground.

§ 87(2)(b) alleged that after he voluntarily went to the ground, one of the officers that was chasing him forcefully put his knee into his back, resulting in a bruise to his lower back. Another officer whom he could not identify allegedly held his foot on § 87(2)(b) ankle until § 87(2)(b) was lifted from the ground, resulting in bruising to his ankle. An officer whom § 87(2)(b) could not identify then allegedly grabbed § 87(2)(b) hair, lifted his head up, smashed it onto the floor, and rubbed his face against the pavement. This officer allegedly repeated this action twice, resulting in scrapes to both of § 87(2)(b) cheeks and his chin. § 87(2)(b) was then handcuffed and the officers then lifted him up and shoved him into a waist-high fence, causing his back to make impact with the fence. While § 87(2)(b) was on the ground, he was looking at the officers' feet, so he could not see which officer did what.

§ 87(2)(b) arrest photograph (Board Review 12) shows a scrape on his left cheek. His Medical Treatment of Prisoner Report (Board Review 13) states that he refused medical attention. § 87(2)(b) stated that he did not seek medical treatment for his injuries.

PO Duffy, Lt. Kelly, and Det. Capo all stated that § 87(2)(b) was already handcuffed when they caught up to him. Sgt. Bowman, PO Hummel, and PO Dappolonia acknowledged assisting in handcuffing § 87(2)(b). All of the officers interviewed denied forcefully putting a knee onto § 87(2)(b) back, stepping on his ankle, lifting his head by his hair, smashing it onto the floor, and rubbing his face against the pavement and denied seeing any officer do so. PO Hummel stated that § 87(2)(b) sustained the scrape on his cheek because he was resisting being handcuffed and was moving his head while he was on the ground. None of the officers interviewed observed any of the other alleged injuries (see Board Review 14 for photographs taken by § 87(2)(b) or knew how they were sustained.

§ 87(2)(b) could not identify which officer used the above described force, and all of the officers interviewed denied seeing any officer do so or doing so themselves. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation G: Det. Jesus Capo damaged § 87(2)(b) property.

Allegation H: Det. Jesus Capo searched § 87(2)(b)

§ 87(2)(b) stated that after he was handcuffed, he was frisked by multiple officers, who continued to search for his knife. Before he ran away from PO Duffy, the knife shifted from his left pocket into the lining of the jacket while PO Duffy was frisking him. An officer whom he could not identify unbuttoned the jacket, ripped a hole in the lining, and removed the knife (see Board Review 15 for photographs). Det. Capo stated that after § 87(2)(b) was handcuffed, PO Duffy informed him that § 87(2)(b) had a knife on his person. Det. Capo saw the outline of the knife in the lining, grabbed it, and used it to create an opening in the lining. He explained that there was no other way to recover the knife because it was not in a pocket.

According to People v. Walton (4 Misc. 3d 1018A (2004)), an officer who frisks a suspect and feels a possible weapon on the suspect's person may subsequently search the suspect for the possible weapon and remove it. According to U.S. v. Ramirez (523 U.S. 65 (1998)), "Excessive or unnecessary property destruction during a search may violate the [Fourth] Amendment." See Board Review 11.

§ 87(2)(g)

[REDACTED]

Allegation I: PO Marc Hummel used physical force against § 87(2)(b)

§ 87(2)(b) alleged that after being walked to an RMP while handcuffed, one or two officers in uniform pushed him against the side of the RMP near the trunk, causing his chest to make impact with the RMP. § 87(2)(b) did not know how many feet he was from the RMP when the officers began pushing him. The officers did not say anything to § 87(2)(b) before pushing him. The officers then allegedly grabbed § 87(2)(b) again and pushed him into the RMP. He stated that he only offered resistance when he ran away from the officers.

PO Hummel stated that he walked § 87(2)(b) to the RMP with another officer whom he could not recall. He stated that § 87(2)(b) offered resistance by moving his torso and elbows but was compliant in entering the RMP. PO Hummel stated that he did not use any physical force in order to place § 87(2)(b) into the RMP. He denied pushing § 87(2)(b) against or into the RMP and seeing any other officer do so. All of the other officers interviewed denied walking § 87(2)(b) to an RMP, pushing § 87(2)(b) against or into an RMP, and seeing any officer do so.

§ 87(2)(g)

[REDACTED]

Pod: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date